

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)	
)	
EASTERN LIVESTOCK CO., LLC,)	Case No. 10-93904-BHL-11
)	
Debtor.)	Hon. Basil H. Lorch III

**TRUSTEE'S MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH MONTY KOLLER**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee ("ELC Trustee") for the bankruptcy estate ("ELC Estate") of Eastern Livestock Co., LLC ("Debtor"), by counsel, respectfully moves the Court to approve a compromise and settlement of claims between the ELC Trustee and Monty Koller a/k/a Monty Larry Koller a/k/a Lamont Koller a/k/a Lamont L. Koller a/k/a Lamont Larry Koller a/k/a Monty L. Koller, Individually, and d/b/a Koller Livestock ("Koller"). In support of this motion ("Settlement Motion"), the ELC Trustee states as follows:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case ("Chapter 11 Case") on December 6, 2010 (the "Petition Date"). The Court entered the *Order For Relief in An Involuntary Case and Order to Complete Filing* [Docket No. 110] on December 28, 2010.
2. On December 27, 2010, the Court entered the *Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 102] approving the *United States Trustee's Application for an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 98] pursuant to 11 U.S.C. § 1104.

3. On November 30, 2012, Kathryn L. Pry, as chapter 7 trustee (the “Gibson Trustee” and together with the ELC Trustee, the “Trustees”) of the bankruptcy estate (“Gibson Estate”) of Thomas P. and Patsy M. Gibson commenced Adversary Proceeding No. 12-59104 in the Bankruptcy Court for the Southern District of Indiana (“Bankruptcy Court”) by filing a complaint against Koller to avoid and recover certain transfers. The District Court for the Southern District of Indiana (“District Court”) granted Koller’s Motion to Withdraw the Reference, where the case is currently pending as Case No. 4:13-cv-00028-RLY-WGH (the “Gibson/Koller Adversary Proceeding”).

4. On December 22, 2012, the ELC Trustee commenced Adversary Proceeding No. 12-59150 in the Bankruptcy Court by filing a complaint against Koller to avoid and recover certain transfers. The District Court granted Koller’s Motion to Withdraw the Reference, where the case was pending as Case No. 4:14-cv-00002-TWP-TAB (the “ELC/Koller Adversary Proceeding”). The District Court consolidated the Gibson/Koller Adversary Proceeding and the ELC/Koller Adversary Proceeding and closed Case No. 4:14-cv-00002-TWP-TAB (collectively, the “Consolidated Koller Litigation”). *See* Case No. 4:14-cv-00002-TWP-TAB, Doc# 10; *see also* Case No. 4:13-cv-00028-RLY-WGH, Doc# 28.

The Settlement

5. The Trustees have negotiated a settlement with Koller on the terms set forth in the *Settlement Agreement And Mutual Release Between Gibson Trustee, ELC Trustee And Monty Koller* attached hereto as Exhibit A (“Settlement Agreement”). Pursuant to the Settlement Agreement, Koller shall: (i) pay the Trustees \$30,000.00 (“First Payment”) within seven (7) days of entry of an order by the Bankruptcy Court approving the Settlement Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019(b); (ii) pay the Trustees \$30,000.00

(“Second Payment”) on or before December 29, 2014, as long as the Bankruptcy Court has entered an order approving the Settlement Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019(b) prior to that date; (iii) execute and deliver an agreed judgment against Koller and in favor of the Trustees in the amount of \$30,000.00 (“Agreed Judgment”) which document will be held by counsel for the ELC Trustee and will not be filed with the Bankruptcy Court or recorded in any county unless and until Koller fails to pay in full the Second Payment; (iv) waive any and all claims and withdraw all claims filed in the Gibson Estate; and (v) waive any and all claims and withdraw all claims filed in the ELC Estate. Within seven (7) days of execution of the Settlement Agreement, the delivery of the First Payment, and delivery of the executed Agreed Judgment, the Trustees shall cause the dismissal with prejudice of the Consolidated Koller Litigation, the ELC/Koller Adversary Proceeding, and the Gibson/Koller Adversary Proceeding.

Basis for Relief

6. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), this Court has authority to approve a compromise or settlement on motion made by the Trustees after notice and opportunity for a hearing.

7. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc., 886 F.2d 921, 927 (7th Cir. 1989).

8. The Trustees believe that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the ELC Estate

and the Gibson Estate. The ELC Trustee asserted claims against Koller under 11 U.S.C. § 550, seeking to recover \$846,000 that the ELC Trustee alleges were the proceeds of fraudulent transfers made by ELC to the Gibsons and subsequently transferred to Koller. Koller believes that the ELC Trustee cannot trace the proceeds and that he has good faith transferee defenses under 11 U.S.C. § 550. Further, Koller has asserted that the Trustees could only collect a fraction of any judgment they obtained because he has limited non-exempt assets available to satisfy any judgment. The Trustees reviewed the information provided to them by Koller, including a liquidation analysis and tax returns. Based on that information, the projected litigation expense of the case, and the ultimate chances of recovery, the Trustees believe that \$60,000 falls squarely within the range of potential recovery from this litigation.

9. If no objections to this Settlement Motion are filed, the Trustees request that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustees request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

WHEREFORE, the Trustees respectfully request that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit B and grant the Trustees all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Dustin R. DeNeal

Counsel for James A. Knauer, Chapter 11 Trustee

Terry E. Hall (#22041-49)
Kevin M. Toner (#11343-49)
Harmony Mappes(#27237-49)
300 N. Meridian Street, Suite 2700
Indianapolis, IN 46204-1782
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
terry.hall@faegrebd.com
kevin.toner@faegrebd.com
harmony.mappes@faegrebd.com

Wendy W. Ponader (#14633-49)
Dustin R. DeNeal (#27535-49)
600 East 96th Street, Suite 600
Indianapolis, IN 46240
Telephone: (317) 569-9600
Facsimile: (317) 569-4800
wendy.ponader@faegrebd.com
dustin.deneal@faegrebd.com

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2014, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt
davidabt@mwt.net

Kay Dee Baird
kbaird@kdlegal.com

C. R. Bowles, Jr
cbowles@bgdlegal.com

Kent A Britt
kabritt@vorys.com

Lisa Koch Bryant
courtmail@fbhlaw.net

Deborah Caruso
dcaruso@daleeke.com

Amelia Martin Adams
aadams@dlgfir.com

Christopher E. Baker
cbaker@thbkllaw.com

David W. Brangers
dbrangers@lawyer.com

Kayla D. Britton
kayla.britton@faegrebd.com

John R. Burns, III
john.burns@faegrebd.com

Ben T. Caughey
ben.caughey@icemiller.com

John W. Ames
james@bgdlegal.com

Robert A. Bell
rabell@vorys.com

Steven A. Brehm
sbrehm@bgdlegal.com

Joe Lee Brown
Joe.Brown@Hardincounty.biz

John R. Carr, III
jrciii@acs-law.com

Bret S. Clement
bclement@acs-law.com

Joshua Elliott Clubb
joshclubb@gmail.com

Jack S. Dawson
jdawson@millerdollarhide.com

David Alan Domina
dad@dominalaw.com

Shawna M. Eikenberry
shawna.eikenberry@faegrebd.com

Robert Hughes Foree
robertforee@bellsouth.net

Thomas P. Glass
tpglass@strausstroy.com

Paul M. Hoffman
paul.hoffmann@stinsonleonard.com

Jeffrey L. Hunter
jeff.hunter@usdoj.gov

Todd J. Johnston
tjohnston@mcjllp.com

Edward M. King
tking@fbtlaw.com

Theodore A. Konstantinopoulos
ndohbky@jbandr.com

David L. LeBas
dlebas@namanhowell.com

Elliott D. Levin
edl@rubin-levin.net

Karen L. Lobring
lobring@msn.com

Harmony A. Mappes
harmony.mappes@faegrebd.com

Kelly Greene McConnell
lisahughes@givenspursley.com

William Robert Meyer, II
rmeyer@stites.com

Allen Morris
amorris@stites.com

Matthew Daniel Neumann
mneumann@hhclaw.com

Matthew J. Ochs
kim.maynes@moyewhite.com

Ross A. Plourde
ross.plourde@mcafeetaft.com

Timothy T. Pridmore
tpridmore@mcjllp.com

Eric W. Richardson
ewrichardson@vorys.com

Jason W. Cottrell
jwc@stuartlaw.com

Dustin R. DeNeal
dustin.deneal@faegrebd.com

Daniel J. Donnellon
ddonnellon@ficlaw.com

Jeffrey R. Erler
jerler@ghjhlaw.com

Sandra D. Freeburger
sfreeburger@dsf-atty.com

Patrick B. Griffin
patrick.griffin@kutackrock.com

John David Hoover
jdhoover@hooverhull.com

Jay Jaffe
jay.jaffe@faegrebd.com

Jill Zengler Julian
Jill.Julian@usdoj.gov

James A. Knauer
jak@kgirlaw.com

Randall D. LaTour
rdlatour@vorys.com

Martha R. Lehman
mlehman@kdlegal.com

Kim Martin Lewis
kim.lewis@dinslaw.com

Jason A. Lopp
jlopp@wyattfirm.com

John Frederick Massouh
john.massouh@sprouselaw.com

James Edwin McGhee
mcghee@derbycitylaw.com

Kevin J. Mitchell
kevin.mitchell@faegrebd.com

Judy Hamilton Morse
judy.morse@crowedunlevy.com

Walter Scott Newbern
wsnewbern@msn.com

Jessica Lynn Olsheski
jessica.olsheski@justice-law.net

Brian Robert Pollock
bpollock@stites.com

Anthony G. Raluy
traluy@fbhlaw.net

Joe T. Roberts
jratty@windstream.net

Kirk Crutcher
kcrutcher@mcs-law.com

Laura Day Delcotto
ldelcotto@dlgfir.com

Trevor L. Earl
tearl@rwsvlaw.com

William K. Flynn
wkflynn@strausstroy.com

Melissa S. Giberson
msgiberson@vorys.com

Terry E. Hall
terry.hall@faegrebd.com

John Huffaker
john.huffaker@sprouselaw.com

James Bryan Johnston
bjtexas59@hotmail.com

Jay P. Kennedy
jpk@kgirlaw.com

Erick P. Knoblock
eknoblock@daleeke.com

David A. Laird
david.laird@moyewhite.com

Scott R. Leisz
sleisz@bgdlegal.com

James B. Lind
jblind@vorys.com

John Hunt Lovell
john@lovell-law.net

Michael W. McClain
mmclain@mcclaindeweese.com

Brian H. Meldrum
bmeldrum@stites.com

Terrill K. Moffett
kendalcantrell@moffettlaw.com

Erin Casey Nave
enave@taftlaw.com

Shiv Ghuman O'Neill
shiv.oneill@faegrebd.com

Michael Wayne Oyler
moyler@rwsvlaw.com

Wendy W. Ponader
wendy.ponader@faegrebd.com

Eric C. Redman
ksmith@redmanludwig.com

David Cooper Robertson
crobertson@stites.com

Mark A. Robinson
mrobinson@vhlaw.com

Joseph H. Rogers
jrogers@millerdollarhide.com

Niccole R. Sadowski
nsadowski@thbklaw.com

Ivana B. Shallcross
ishallcross@bgdlegal.com

James E. Smith, Jr.
jsmith@smithakins.com

Joshua N. Stine
kabritt@vorys.com

Meredith R. Theisen
mtheisen@daleeke.com

Christopher M. Trapp
ctrapp@rubin-levin.net

Andrew James Vandiver
avandiver@aswdlaw.com

Stephen A. Weigand
sweigand@ficlaw.com

Michael Benton Willey
michael.willey@ag.tn.gov

Jeremy S. Rogers
Jeremy.Rogers@dinslaw.com

James E. Rossow
jim@rubin-levin.net

Thomas C. Scherer
tscherer@bgdlegal.com

Sarah Elizabeth Sharp
sarah.sharp@faegrebd.com

William E. Smith, III
wsmith@k-glaw.com

Andrew D. Stosberg
astosberg@lloydmc.com

John M. Thompson
john.thompson@crowedunlevy.com

Chrisandrea L. Turner
clturner@stites.com

Andrea L. Wasson
andrea@wassonthornhill.com

Charles R. Wharton
Charles.R.Warton@usdoj.gov

Jason P. Wischmeyer
jason@wischmeyerlaw.com

John M. Rogers
johnr@rubin-levin.net

Steven Eric Runyan
ser@kgirlaw.com

Stephen E. Schilling
seschilling@strausstroy.com

Suzanne M Shehan
suzanne.shehan@kutakrock.com

Amanda Dalton Stafford
ads@kgirlaw.com

Matthew R. Strzynski
indyattorney@hotmail.com

Kevin M. Toner
kevin.toner@faegrebd.com

U.S. Trustee
ustpregion10.in.ecf@usdoj.gov

Jennifer Watt
jwatt@kgirlaw.com

Sean T. White
swhite@hooverhull.com

James T. Young
james@rubin-levin.net

I further certify that on June 24, 2014, a copy of the foregoing pleading was served via electronic mail transmission on the following:

Thomas Richard Alexander, II
tra@rgba-law.com

/s/ Dustin R. DeNeal